

1 RITA M. HAEUSLER (SBN 110574)
2 rita.haeusler@hugheshubbard.com
3 HANNAH A. BOGEN (SBN 324294)
4 hannah.bogen@hugheshubbard.com
5 HUGHES HUBBARD & REED LLP
6 1999 Avenue of the Stars, 9th Floor
7 Los Angeles, CA 90067-4620
8 Telephone: (213) 613-2800
9 Facsimile: (213) 613-2950

10 Attorneys for Applicants Path Network, Inc. and Tempest Hosting, LLC

11 NURY SIEKKINEN (PRO HAC VICE)
12 NURY@ZWILLGEN.COM
13 ZWILLGEN PLLC
14 1900 M Street NW, Suite 250
15 Washington, DC 20036
16 Telephone: (202) 706-5229
17 Facsimile: (202) 706-5298

18 Attorneys for Respondent Discord Inc.

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 In Re *Ex Parte* Application of
22 Path Network, Inc. and Tempest Hosting,
23 LLC,
24 Applicants.

CASE NO. 3:23-MC-80148-PHK

[MAGISTRATE JUDGE PETER H. KANG]

**JOINT STIPULATION AND
[PROPOSED] ORDER**

Pursuant to the Court’s August 23, 2023 order subd. (3) pp. 2-3, Applicants Path Network, Inc. (“Path”) and Tempest Hosting, LLC (“Tempest”) (collectively “Applicants”) and Respondent Discord Inc. (“Discord”) hereby stipulate as follows:

1. A commissioner does not need to be appointed in this matter.

2. If the Application is granted and a subpoena is issued in accordance with Fed. R. Civ. P. 45, Discord does not object to the production of the following data responsive to the following requests in the subpoena that Applicants filed with the Court on May 22, 2023 (the “Discord Subpoena”):

- 1) All account data, not including the contents of electronic communications, associated with Curtis Gervais, including any aliases he used, such as cmg#82391;
- 2) All account data, not including the contents of electronic communications, associated with Rene Roosen, including any aliases he used, such as Renual#7394;
- 3) All account data, not including the contents of electronic communications, associated with Archetype#8484;
- 4) Roosen, Gervais and Archetype#8484’s login history for any and all Discord accounts, including but not limited to cmg#8239, Renual#7394, and Archetype#8484; and
- 5) Any and all headers of messaging data associated with any of Roosen, Gervais, or Archetype#8484’s Discord account(s) including cmg#8239, Renual#7394 and Archetype#8484.

3. “Account data” includes a user’s first and last name, email address, birthdate, and any other non-content identifying information for a specific user.

4. “Header” includes the name and email addresses of the sender, recipient, and any copied or blind copied recipients in a particular Discord message, and the time that message was sent and/or received.

5. Any revised Discord Subpoena that Applicants submit to the Court for approval may include request nos. 1-5 above subject to the restrictions therein.

6. Any revised Discord Subpoena will not exceed the bounds of the production orders issued by the Superior Court of Justice in Ontario, Canada in the Canadian proceedings for

1 which the instant discovery is sought. Applicants shall ensure that the requests are narrowly
2 tailored to those orders.

3 7. Discord is under no obligation to produce data responsive to the revised Discord
4 Subpoena until (1) the Court rules on the Parties' supplemental briefing to be filed on September
5 1, 2023 and September 8, 2023, (2) Applicants file a valid, revised Discord Subpoena, and (3) the
6 Court issues it.

7 8. At the time of production in response to the revised Discord Subpoena, Discord
8 will use the additional identifying information sent to it by Applicants on August 17, 2023 to
9 guide its search for responsive data.

10 9. Applicants and Discord will brief the following issues on September 1, 2023 and
11 September 8, 2023:

- 12 • Whether Discord can be prevented from notifying Gervais
13 of the Discord Subpoena;
- 14 • Whether passwords constitute non-content exempt from the
15 Stored Communications Act ("SCA");
- 16 • Whether Gervais has impliedly consented to the disclosure
17 of his Discord communications such that the SCA does not
18 require his express consent to Discord's disclosure; and
- 19 • Whether a litigation hold pausing any of Discord's routine
20 deletion procedures is required, notwithstanding Discord's
21 preservation of all responsive accounts.

22 **IT IS SO STIPULATED.**

23 DATED: September 1, 2023

24 By: /s/ Hannah A. Bogen
25 Rita M. Haeusler
26 Hannah A. Bogen
27 Hughes Hubbard and Reed LLP
28 Attorneys for Applicants Path Network, Inc.
and Tempest Hosting, LLC

DATED: September 1, 2023

By: /s/ Nury M. Siekkinen
Nury M. Siekkinen
Zwillgen PLLC
Attorney for Respondent Discord, Inc.

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

DATED: _____, 2023

United States Magistrate
Judge Peter H. Kang